

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.29 of 2016

1. Prabhawati Devi, Wife of Sri Shambhu Sah, Resident of Village – Parsa, P.O. Marjadwa, Purshotampur, District – West Champaran.
2. Jago Devi, Wife of Sri Lakhan Sah, Resident of Village – Parsa, P.O. Marjadwa, Purshotampur, District – West Champaran.
3. Gita Devi, Wife of Sri Jagan Sah, Resident of Village – Parsa, P.O. Marjadwa, Purshotampur, District – West Champaran.

... .. Petitioner/s

Versus

1. Rajesh Prasad Sah, Son of Ramjee Prasad Sahn Resident of Village – Parsa, P.O. Marjadwa, Purshotampur, District – West Champaran.
2. Shekh Md. Reyaz, Son of Shekh Lal Mohammadn Resident of Village – Parsa, P.O. Marjadwa, Purshotampur, District – West Champaran.
3. Munna Sah
4. Tunna Sah,
5. Tinku Sah,
6. Pinku Sah,
7. Rinku Sah,

All sons of Late Jokhan Sah, under guardianship of Most. Shobha Kuar and all residents of Village – Parsa, P.O. Marjadwa, Purshotampur, District – West Champaran.

8. Nitu Devi, Wife of Sri Anil Sah, D/o Late Jokhan Sah, Resident of Village & P.O. Mahuwan, P.S. - Pokharia, District – Parsa (Bihar).
9. Shobha Kuar, W/o of Late Jokhan Sah, Resident of Village – Parsa, P.O. Marjadwa, Purshotampur, District – West Champaran.
10. Gena Kuar, Wife of Late Sitaram Sah, Resident of Village – Parsa, P.O. Marjadwa, Purshotampur, District – West Champaran.
11. Sangita Devi, Wife of Madan Sah, D/o- Late Sitaram Sah, Resident of Village & P.O. Bhuriya, P.S. - Palnawa, District – East Champaran.
12. Shekh Monaf, Son of Shekh Shamid, Resident of Village – Parsa, P.O. Marjadwa, Purshotampur, District – West Champaran.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Dwivedi, Sr. Advocate
For the Respondent/s : Mr. Umesh Chandra Verma, Advocate
Mr. Hemant Ray, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 30-09-2024

The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 10.07.2015 passed by learned 1st Additional District Judge, Bettiah in Misc. Appeal No. 22 of 2012, affirming the order dated 15.05.2012 passed by learned Subordinate Judge-III, Bettiah in Title Suit No. 111 of 2010, whereby and whereunder the prayer of the plaintiffs/petitioners for grant of injunction on the suit land has been rejected.

2. The conspectus of the case, as it emerges from the record, is that the petitioners are plaintiffs, who have filed Title Suit No. 111 of 2010 in the court of learned Sub Judge, Bettiah, West Champaran seeking declaration of their title and confirmation of possession over the property mentioned in Schedule 6 of the plaint and alternative prayer has also been made that if the plaintiffs are dispossessed during the pendency of the suit, a decree for recovery of possession may also be granted in their favour. The plaintiffs also prayed for a declaration that sale deeds dated 04.04.2009/06.04.2009 executed by defendant 1st party were illegal, void and nullity.



The plaintiffs have also prayed for grant of injunction. The respondent nos. 1 and 2 are defendant nos. 1 and 2 in the title suit. The plaintiffs gave a genealogy with their plaint submitting that one Dhorha Sah had two sons namely, Khirodhan Sah and Sitaram Sah. Khirodhan Sah was married to Mantura Kuer and they have three sons namely, Shambhu Sah, Lakhan Sah and Jagan Sah, who are defendant nos. 13, 14 and 15 in the said title suit and husbands of the plaintiffs/petitioners, respectively. Sitaram Sah had married twice and had one son, Jokhan Sah from his first wife and a daughter Sangita Devi, from his second wife. Jokhan Sah had five sons and a daughter, who are defendant nos. 3 to 9 in the title suit and also respondent nos. 3 to 9 in the present petition. Second wife of Sitaram Sah, namely Gena Kuar, is defendant no.10/respondent no. 10 and defendant no. 11/respondent no. 11 is daughter of Sitaram Sah. The wife of Khirodhan Sah is Mantura Kuer who has been made defendant no. 12 in the title suit. After the death of Dhorha Sah, the joint ancestral property of the family was partitioned between Khirodhan Sah and Sitaram Sah as wife of Dhorha Sah predeceased him. The property purchased in the name of wife of Dhorha Sah, namely Shivratri Devi, was also partitioned between two brothers. The dispute is with regard to the property



purchased in the name of Shivratri Devi and the said property is having area of 1 bigha 4 dhurs in Plot Nos. 617, 806, 805 and 808 of Holding No. 20. Sitaram Sah got Schedule III property from the purchased land of Shivratri Kuer in the following manner:-

Plot No. 805 – 3 katha 10 dhur

Plot No. 806 – 4 katha 5 dhur

Plot No. 808 – 1 katha 11 dhur

Plot No. 617 – 16 dhur.

On the other hand, Khirodhan Sah got his share in Schedule IV property in the following manner:-

Plot No. 617 – 6 katha 4 dhur

Plot No. 805 – 7 dhur

Plot No. 806 – 3 katha 11 dhur.

It further appears that after death of Khirodhan Sah his wife and sons came into possession of their respective share out of the property which passed to Khirodhan Sah. The wife of Khirodhan Sah, Mantura Kuer, transferred 4 katha of land of her share from plot nos. 617 and 806 in favour of the plaintiffs who are wives of her sons. It has been submitted by the plaintiffs that in the description of the property, instead of plot nos. 806, plot no. 805 has been mentioned but the boundary etc. were correct



and this plot no. 806 is subject matter of gift along with plot no. 617. After getting the gift from their mother-in-law, the plaintiffs sold 16 dhur land to one Sheikh Imtiyaz vide registered sale deed dated 22.05.2007. Further case of the plaintiffs is that plot no. 617 was adjacent to road and at the time of partition, Khirodhan Sah being a dim-witted person was allotted major chunk of plot no. 617 by his brother Sitaram Sah, who was a clever person, since the land of road side was prone to damage by the cattle of the villagers and for this reason, Sitaram Sah retained only 16 dhur from the said land whereas 6 katha 4 dhur was given to Khirodhan Sah. However, when the price of road side land escalated, the descendants of Sitaram Sah started asking for a fresh partition of plot no. 617 which was refused by the plaintiffs. Proceeding under Section 144 Cr.P.C. was also initiated at the instance of the defendants and complaint case was also filed which was dismissed. During this period, on 04.04.2009 and 06.04.2009 the defendant 2nd set executed two sale deeds in the name of defendant nos. 1 and 2 for 10 dhur and 2 katha 4 dhur land, respectively from plot no. 617. Further, 2 katha 16 dhur land was sold from plot nos. 808 and 806. The sale of the land vide aforesaid sale deeds resulted in filing of the present title suit by the plaintiffs challenging the



sale deeds and claiming their title and possession over the suit land.

3. During pendency of the suit as the defendants started negotiation for sale of the gifted land of the plaintiffs, they filed a petition on 21.01.2011 under Order 39 Rule 1 and 2 of the Code of Civil Procedure (in short 'the Code') praying to restrain the defendants from alienating/encumbering the suit properties in any manner. The defendants filed rejoinder and contested the claim. The matter was heard and learned Sub Judge rejected the injunction application filed by the plaintiffs vide order dated 15.05.2012. Being aggrieved and dissatisfied by the said order, the plaintiffs filed Misc. Appeal No. 22 of 2012 which was also dismissed vide order dated 10.07.2015. Both the aforesaid orders are under challenge in the present case.

4. Learned Senior counsel Mr. Shashi Shekhar Dwivedi appearing on behalf of the plaintiffs/petitioners submitted that the orders of both the Subordinate courts are perverse for the reason that both the courts have given a completely new meaning to *prima facie* case. Both the Subordinate courts held that the gift deed in favour of the plaintiffs is a disputed fact and unless the correctness of gift



deed is decided by court, it would not be proper to pass any order for injunction. The decision of both the courts is based merely on this reasoning and on this ground alone, both the courts held that plaintiffs were not having any *prima facie* case, balance of convenience and further held that the plaintiffs would not suffer any irreparable loss if injunction is not granted. Both the courts committed gross error in considering that *prima facie* case will arise in favour of the plaintiffs only when the plaintiffs prove their case to the hilt. The courts below ignored the established principle of law that when there is a fair question giving rise to a triable issue, that shows the existence of prima face case. Mr. Dwivedi further submitted that the Subordinate courts failed to take into consideration the relationship of parties and the partition of property between Khirodhan Sah and Sitaram Sah otherwise the courts would have easily seen that the sale deeds dated 04.04.2009 and 06.04.2009 executed by defendants are dubious documents. The Subordinate courts failed to appreciate the settled principle of law that during pendency of litigation property of *lis* should be preserved so that in the event of success in the suit, the decree would not become barren. Mr. Dwivedi further submitted that the Subordinate courts have failed to appreciate that if defendants are not



restrained from creating 3rd party interest and from changing the nature of the suit, it will lead to multiplicity of litigation and will cause irreparable injury to the plaintiffs. Mr. Dwivedi further submitted that the defendants have not challenged the gift deed in favour of the plaintiffs and for this reason, the objection to the gift deed is immaterial. Moreover, the claim of the plaintiffs is based on the gift deed executed by Mantura Kuer in their favour and the suit is instituted against the defendants by virtue of the said gift deed. The findings of the learned Subordinate courts on this count holding absence of prima facie case is not correct. Lastly, Mr. Dwivedi placed reliance in the case of *Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, reported in (2004) 8 SCC 488 : AIR 2005 SC 104*, on the proposition that during pendency of the suit, the court should not permit the nature of property to be changed.

5. Learned counsel appearing on behalf of the respondents vehemently contended that there is no infirmity in the impugned orders and the same does not need any interference. Learned counsel further submitted that the plaintiffs have failed to show that the donor of the plaintiffs had got a valid title and was entitled to transfer the land through gift



deed in favour of the plaintiffs. Unless they are able to prove this fact, they are not entitled for grant of any injunction. Learned counsel further submitted that for this reason, the plaintiffs are not having any *prima facie* case. Learned counsel further submitted that the grant of injunction would result in greater suffering to the respondents and relied on a decision of Hon'ble Supreme Court in the case of ***Gujarat Bottling Co. Ltd. & Ors. vs The Coca Cola Co. & Ors.*** reported in ***(1995) 5 SCC 545***. Learned counsel further submitted that the donor of the plaintiffs have failed to show the transfer in her favour and there is no documentary evidence to this effect and hence no title passed to her. Thus, learned counsel submitted that there is no merit in the present petition and the same be dismissed.

6. I have considered the submission made on behalf of the parties and also perused the records. In the case of ***Gujarat Bottling Co. Ltd. & Ors. vs The Coca Cola Co. & Ors.*** reported in ***(1995) 5 SCC 545*** the Hon'ble Supreme Court has held that "The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a *prima facie* case; (ii) whether the balance of convenience is in



favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.”

Further in *Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, reported in (2004) 8 SCC 488 : AIR 2005 SC 104*. Paragraph 10 of this decision reads as under:-

“10. Be that as it may, Mr Sachar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions on



which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.”

7. Now coming to the facts of the case. The plaintiffs claimed the suit property on the basis of a gift deed executed by their mother-in-law in the suit land which the donor of the plaintiffs claimed on basis of family partition as the said land fell in share of her late husband. Thus, the question has been raised which needs to be answered after detailed hearing and whatever may be the defence of the defendants, that would be looked into by the learned trial court in course of the trial including the fact that whether donee has right, title or entitlement over the suit property. The balance of convenience somewhat favours the plaintiffs as there is no challenge to the gift deed. Lastly the court has to see who will suffer more in



case of refusal of injunction whether the plaintiffs or if the injunction is granted whether the defendants? In the circumstances, if the property is subjected to alienation it may lead to multiplicity of litigation and hence, the question of multiplicity of litigation is also to be taken into consideration which granting or rejecting injunction. Further, considering the decision of Hon'ble Supreme Court in the case of *Maharwal Khewaji Trust (supra)*, the *lis* property is to be preserved so that it is available when the suit is decided. Otherwise, the decree would become barren and the whole process would become a fruitless exercise.

8. Therefore, without further going into the merits of the case, in the light of discussion herein before and in order to preserve the suit property, I am of the considered opinion that the impugned orders dated 10.07.2015 and 15.05.2012 of learned Subordinate courts are not sustainable and hence, the same are set aside as suffering from error of jurisdiction. The injunction petition dated 21.01.2011 and 26.05.2011 are allowed to the extent that the parties are directed not to alienate or transfer or create third party interest in the suit property till the disposal of the suit. The learned trial court is directed to proceed into the matter and dispose of the title suit within a year from



the date of receipt/production of a copy of this order considering the pendency of the suit since year 2010. It is also made clear that this Court has not made any comments on the merits of the case of the parties and all issues are left open to be decided by the learned trial court.

9. With the aforesaid directions, the present petition stands allowed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	10.09.2024
Uploading Date	01.10.2024
Transmission Date	NA

